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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/094,279 | 06/09/1998 | GUANGLIN SUN | 33343-01 | 8189 |

26474 7590 07/19/2002

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WASHINGTON, DC 20036

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| EXAMINER |
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LEVY, NEIL S

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| ART UNIT | PAPER NUMBER |
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1616

DATE MAILED: 07/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/24/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 36, 39-61, 63-78, 81-93 & 95-100 is/are pending in the application.
- Of the above claim(s) 69, 70, 74-78 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 36, 39-61, 63-68, 71, 73, 81-93, 95-100 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 36, 39-61, 63-78, 81-93 & 95-100 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of RCE and amendment of 6/24/02 respectively. Thank you for the reiterated claims. Sorry for the handwriting.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The election and restriction requirements are maintained, as applicant has not requested otherwise. The elected invention was examined with the matrix products. The species, as far as examiner can determine have not been declared to be equivalent; applicant elected AcMNPVPx1 as the pesticide species.

Claims 69, 70, 74-78 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

The attempt to incorporate subject matter into this application by reference to WO and EP documents is improper because office policy does not yet dictate incorporation of foreign patents and applications, so Examiner requests transfer of the critical material to the specification, or argument for WO and EP incorporation with citation in the instant specification of page and line.

Claims 40-43, 72, 82, and 99 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following inconsistencies/indefiniteness is evident:

Claim 40 is ~~now~~ redundant; and does not further limit 36, which already requires "well-below—", so all claims dependent on 40 are indefinite. Claim 72 is open to

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multiple interpretation; we assume the DNA virus must be either an NPV or a GV; if NPV, then one or more of the NPV of (1); if GV, then one or more of (2). Claim 82, 99 do not have proper antecedent for stilbene. We will go with OXFORD Dictionary for DNA, RNA as being general.

36, 39-61, 63-68, 71, 72, 81-93 and 95-100 are
Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Miller

5662891 of Bohm et al 4948586 or Fakh Rudden EP 697170 in view of Rheume et al 5560909.

The rejection of record is maintained.

Applicant's arguments filed 6/24/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered and rejections withdrawn in accord. As to the art rejections, applicant focuses on the instant claim language, as not requiring specified pH or amounts, but mandating pH below solubilization point. We see Rheume achieving that whether willfully or not, in the course of the preparation's having free charged groups, inclusive of carboxyl groups, when the polymers used are those instantly used, and the polymers are not completely solubilized; their dispersed. Further, the particular claim to well known ingredients for the purpose for which they are known to be used, and optimization of effects by adding such ingredients and appropriate amounts thereof, are not seen as bases for patentability—in respect for instance, to the optional ingredient combinations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412.

The examiner can normally be reached on Tuesday through Friday 7 am- 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy: mv
July 15, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy".

NEIL S. LEVY
PRIMARY EXAMINER